

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MICHAEL ALEXANDER)
THOMPSON,)
)
Petitioner,)
) Case No. CIV-17-758-F
-vs-)
)
JANET DOWLING, Warden,)
)
Respondent.)

ORDER

United States Magistrate Judge Suzanne Mitchell has issued a Report and Recommendation, recommending that petitioner's petition under 28 U.S.C. § 2254 seeking habeas relief from a March 31, 2009 conviction and sentence be summarily dismissed as time-barred. Doc. no. 9. Magistrate Judge Mitchell has also concluded that the adoption of her recommendation would moot petitioner's Motion for Appointment of Counsel and his Motion to Certify Question of Law to Oklahoma Supreme Court. *Id.*

Petitioner has objected to the Report and Recommendation. Pursuant to 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the matter. The court concurs with Magistrate Judge Mitchell that petitioner's action is time-barred. The court finds that petitioner's arguments to be without merit. The court concludes that petitioner has failed to establish statutory tolling or equitable tolling of the limitations period. Therefore, the court adopts the Report and Recommendation in its entirety.

Rule 11 (a) of the Rules Governing Section 2254 Cases in the United States District Courts requires the district court to either issue or deny a certificate of appealability when it enters a final order adverse to the petitioner. Where, as here, “the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Upon review, the court concludes that petitioner has not made the requisite showing. The court thus finds that a certificate of appealability should be denied.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell (doc. no. 9), on September 1, 2017, is **ACCEPTED, ADOPTED** and **AFFIRMED**. Petitioner, Michael Alexander Thompson’s Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody (doc. no. 1), is summarily **DISMISSED** as time-barred. In light of the petition’s dismissal, petitioner’s Motion for Appointment of Counsel (doc. no. 1, p. 17-18) and Motion to Certify Question of Law to Oklahoma Supreme Court (doc. no. 3) are **DENIED** as **MOOT**. A certificate of appealability is **DENIED**.

IT IS SO ORDERED this 4th day of October, 2017.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE